

2014 WL 5788960 (Idaho) (Appellate Brief)  
Supreme Court of Idaho.

Wayde T. NELSON, Appellant.,  
v.  
IDAHO DEPARTMENT OF HEALTH and Welfare, Respondent.

No. 41282-2013.  
October 17, 2014.

Appeal from the District Court of the Fourth Judicial District of the State of Idaho in and for the County of Ada  
Honorable Kathryn A. Sticklen Presiding Judge

**Reply Brief of Appellant**

211 Nut Basin Road, White Bird, ID 83554, (208) 839-2827, Appellant, Wayde Nelson, Pro Se.

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## \*1 II. ARGUMENT IN REPLY

### A. The Department has not shown that Wayde Nelson made a willful concealment of pertinent information when applying for Food Stamps.

The Department's Response to Appellant's Brief does not present clear or accurate evidence indicating that Wayde Nelson made a false or misleading statement, misrepresented, or concealed, that he withheld facts in order to obtain food stamp benefits that his household was not entitled to receive, or that he committed any act that violated any Federal statute or or regulation related to the acquisition of Food Stamps. In order to trigger the application of regulations related to an Intentional Program Violation (IPV), there must be willful concealment of pertinent information. When the Department made it's final determination about the overages, they were \$323.00 for the month of February, 2009, a month when Mr. Nelson still hadn't received an EBT card from the Department so he could access funds in order to purchase food for his family.

It is very difficult to believe that anyone in his right mind would apply for assistance and commit an IPV in order to have the Department fail to provide his family with assistance for 103 days, when the Application for Assistance indicated funds would be available within one week, and if the client needed immediate help, all he had to do was sign the first page and hand it in without filling it out. In all matters before this court the Department has refused to address its own omissions, which were many

Mr. Nelson's situation worsened day by day as a result of the Department's errors and inefficiency in the management of his case. The mother of Wayde Nelson's child died in July \*2 2007, and Wayde Nelson was dealing with having full custody of his child during a time of Recession, and a time when his mother, Victoria Nelson had many problems of her own.

In the Notices of Disqualification and Demand Letters asking for Mr. Nelson to repay overages and overissuances, the Department demanded a repayment of \$1,380.00. On Page 1, Lines 4-7, of the Department's Response Brief, the Department states that Mr. Barron held in the Final Decision and Order that Mr. Nelson committed an Intentional Program Violation by intentionally, knowingly, and willfully failing to fully and accurately report income and resources; found his joint bank account was a countable resource; and assessed an overpayment of \$323. (AR 2, pp. 1-14].

On Page 19, Lines 5-9, the Department indicates that there is no definitive case law in Idaho addressing the definition of an IPV. The Department goes on to state that the Idaho Supreme Court has defined “willfully” to mean individuals who “purposely, intentionally, consciously, or knowingly fail to report a material fact [or make a false statement], not those whose omission [or false statement] is accidental because of negligence, misunderstanding, or other cause.”

There is no evidence indicating Wayde Nelson made a false or misleading statement, or misrepresented, concealed, or withheld facts in order to obtain Food Stamp benefits that his household was not entitled to receive, or that he committed any act that violated a Federal statute or regulation related to the acquisition of Food Stamps. In order to trigger the application of regulations related to an Intentional Program Violation, there must be a willful concealment of pertinent information. There was no willful concealment of information by Wayde Nelson. In \*3 fact there was no money or means of accessing funds provided in order for this household to purchase food. [Code of Federal Regulations: 7 C.F.R.253.8(a)] [United States v. Ward, 575 F.Supp.159(E.D.N.C. 1983)].

The Department has ignored that the findings affirmed by the District Court, were: (1) in violation of constitutional or statutory provisions; (2) in excess of statutory authority of the agency; (3) made upon unlawful procedure; (4) not supported by substantial evidence on the record as a whole; and were (5) arbitrary, capricious, and an **abuse** of discretion. [Idaho Code I.C. §67-5279(3)] The details of these violations will be provided.

There were substantial errors in the processing of Wayde Nelson's applications that are supported by the record. When Russell Baron, Administrator for the Department of Welfare, concluded the Joint Account was Wayde Nelson's, he is wrong. According to US Bank requirements, in order to apply for a Senior Silver Elite Account, a party must be **elderly**. Wayde Nelson is not a senior and could not take out this account. It could only be taken out by Victoria Nelson. It was called a Senior Silver Elite Account, and it was possible to put Victoria's son onto the account so that he could pay her bills. He was not managing the account or keeping track of the statements, since his mother was in California for medical treatment related to a work injury and she was keeping track of the deposits and expenditures from her account.

These errors are relevant to the Intentional Program Violation (IPV) proceeding. The IPV action against Wayde Nelson was flawed by an incomplete agency record, full of Department error, employee ignorance, lack of updating Idaho regulations, and problems of an ongoing recession, which wasn't considered by the District Court at the time of its Decision. \*4 The Department's findings are clearly erroneous. Mr. Nelson did not commit an IPV.

Clouding the Department's decisions regarding Wayde Nelson and the purported IPV is the fact that the Department failed to adequately interview or assist Wayde Nelson with his Application for Assistance. He was an expedite eligible party who should have received food assistance within one week of applying. Mr. Nelson was a person with disability that the Department ignored. He was a person who had not sought assistance previously.

Despite the Department claiming that interviews or recertification procedures could take place by phone, the Department was expecting him to drive about 50 miles round trip almost every day for interviews or participation in the Job Search Assistance Program (JSAP), when he should have been exempt. Wayde Nelson reported a condition of seizure disorder (epilepsy), had no income, and all of this was going on in the middle of winter. Yet he was required to appear at the Westgate Office in Boise for interviews in the middle of the worst winter in the Northwest.

Occasionally notices sent to Mr. Nelson scheduling appointments didn't arrive at his Home residence until after the appointment and his services were canceled. Problems with receipt of food assistance are outlined in an attached letter to Wayde Nelson from Richard Armstrong, Director of Idaho Department of Health and Welfare, dated July 27, 2009. [Ex. 116, WN0000017-18].

While there was information available to Department intake workers with the contract agency, Arbor Education and Training, the agency overseeing participation in the Job Search Assistance Program (JSAP), the Department was embroiled in a lawsuit that was filed against Director Richard Armstrong and the Department as a result of the Department's cancellation of \*5 Arbor's

contract. The Department engaged another agency, Working Solutions - Goodwill, to oversee JSAP. Transportation to and from the JSAP locations was difficult in the middle of winter. It entailed a drive of over 50 miles round-trip, only to run into the inefficient operations of two agencies involved in the lawsuit. Wayde Nelson's Job Search records were originally with Arbor and were finally sent to Mr. Nelson following a Public Records Request.

#### **B. There is no definitive case law in Idaho addressing the definition of an IPV.**

On page 19 of the Response Brief, the Department states the following related to Idaho Case law and the definition of an IPV: There is no definitive case law in Idaho addressing the definition of an IPV. However, the Idaho Supreme Court has defined "willfully" to mean individuals who "purposely, intentionally, consciously, or knowingly fail to report a material fact [or make a false statement], not those whose omission [or false statement] is accidental because of negligence, misunderstanding, or other cause."

There is insufficient evidence indicating that Wayde Nelson committed and intended to commit an Intentional Program Violation. The Department used inaccurate income criteria when evaluating Mr. Nelson's income. Pursuant to [7 C.F.R. 273.8\(b\)](#) *Maximum allowable resources*. The maximum allowable resources, including both liquid and nonliquid assets, of all members of the household shall not exceed \$2,000 for the household, except for households including one or more disabled members or a member or members age 60 or over, such resources shall not exceed \$3,000. Mr. Nelson's income never exceeded this amount, and his mother's income deposited into the U.S. Bank Senior Silver Elite Account, on which he was a signor, was protected pursuant to Uniform Probate Code provision found in [Idaho Code §15-6-103 \(a\)](#), Regarding Multiple *\*6 Party Account Ownership*. A joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a different intent. No such evidence has been demonstrated by the Department. Despite the erroneous claims of the Department, none of the money deposited into the Senior Silver Elite Joint Bank Account came from Wayde Nelson's earnings.

#### **C. Department was negligent by not reviewing Wayde Nelson's Applications for Assistance in which he reported disability.**

On Page 14, Paragraph 2, of the Department's Response, it is evident that the Department failed to review Mr. Nelson's report of the disability of childhood onset seizure disorder during its investigation of Wayde Nelson related to the Department's purported allegation of an IPV. Instead, Eileen Williams, Fraud Investigator, focused erroneously on bank accounts, erring in determining that Mr. Nelson was over resources and over income, claiming he owed \$1,380.00 when the final report was \$323.00 for the month of February 2009, when he had no means of accessing food for his family since he wasn't provided an EBT card to access funds for 103 days.

While the Department claims on Page 14, Paragraph 3, that Ms. Williams found that Mr. Nelson committed an Intentional Program Violation (IPV) from February through May, 2009, yet as required by Code of Federal Regulations, [7 C.F.R. 253.8\(e\)](#) Ms. Williams failed in four instances of Notices of Disqualification and Demands Letters for Repayment of Overissuances/ Overpayments and Repayment Agreements dated October 22, 2009, November 24, 2009, January 21, 2010, and March 11, 2010 to accurately provide the household member with a notice of disqualification within 10 days of *allegedly substantiating* that the household member *\*7* committed an intentional program violation and to let the party accurately know what the correct amount of overages was. In all four instances a random amount of \$1,380.00 was selected as the amount Ms. Williams wanted to be repaid. The later order related to the IPV was for \$323.00 for the month of February, a month he had no means of accessing funds to purchase food for his family. Demand Letters were inadequate because they did not inform the recipient of the state's discretionary settlement authority to settle, adjust, compromise, or deny recovery of all or a part of the overpayments. [[Bliek v. Palmer, 102 F.3d 1472](#) (8th Cir. 1997)].

The Department failed miserably in its attempt to file an IPV against Wayde Nelson. The November 24, 2009 Notice indicated he had committed an Inadvertent Household Error, (IHE). The Department is incorrect when it claims there was no Notice of Disqualification and Demand Letter sent to Mr. Nelson on this date. It is provided into evidence in this case.

The basis of the Intentional Program Violation filed against Wayde Nelson, was solely due to the Department's negligence to consider Mr. Nelson's report of disability on applications filed with the Department on January 30, 2009 (stamped received by the Department February 6, 2009), or to consider Mr. Nelson report of disability on the Recertification Application received by the Department on April 29, 2009. As a result of this negligence, the Department used the wrong income criteria regarding Mr. Nelson's receipt of food stamp benefits, as well as making numerous other errors in the provision of benefits to his family. [7 C.F.R. §273.8(b)]

There is overwhelming evidence to find an Agency Error Claim which is "caused by a Department action, or a failure to act" [IDAPA 16.03.04.675.03], a circumstance not reached or \*8 considered by either the hearing officer or the Department's Administrator for the Division of Welfare, due, at least in part, to their flawed causal analysis on the IPV proof of "intent."

Had Eileen Williams or the Department done an accurate review of Mr. Nelson's Applications, which reported his disability of seizure disorder (epilepsy), and his disclosed bank accounts, the Department would have found that Mr. Nelson had disability and qualified for food stamp benefits for the disabled, pursuant to Code of Federal Regulations [7 C.F.R. 273.8(b)], Instead the Department overlooked Mr. Nelson's report of disability, and claimed the maximum resources for his household should not exceed \$2,000.00. In fact, this varied, and at times they expected his household resources not to exceed \$1,597.00.

#### **D. Department provided inaccurate testimony regarding ownership of a U.S. Bank Senior Elite Bank Account.**

On Page 14, Paragraph 1 of the Department's Response, the Department claims that Eileen Williams, Fraud Investigator with Idaho Department of Health and Welfare, testified that ownership of a bank account is determined by whether the individual is signatory and has access to the funds. Her testimony is erroneous and she has no professional standing to indicate that she had the authority or expertise to provide such testimony. Contrary to the testimony of Eileen Williams, pursuant to Uniform Probate Code provision found in Idaho Code §15-6-103 (a), Regarding *Multiple Party Account Ownership*. A joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a different intent.

All funds deposited into Victoria Nelson's U.S. Bank Senior Silver Elite Bank Account ere deposited at the request of the account owner, Victoria Nelson. These deposits all came \*9 from government funds provided to Victoria Nelson through Victoria Nelson's Social Security Retirement Benefits, California Workers Compensation Insurance Benefits related to a work Injury in California, Reverse Mortgage Home Loan funds from an FHA Reverse Mortgage, and Insurance funds provided to Victoria Nelson as a result of damages to Victoria's home. None of The government entities were making payments to Wayde Nelson. All money withdrawn from the account by co-signor, Wayde Nelson, was used to pay Victoria's expenses. The money was intended solely for Victoria Nelson, as reported in a letter from the California Workers Compensation Insurance Attorney, Scott Kubis. [Ex.101, WN000084-85]

On Page 14, Paragraph 2, of the Department's Response, the Department claims that in a review of Mr. Nelson's applications, Eileen Williams found that Mr. Nelson did not disclose his individual USB account in the December 2008 application, he did not disclose the joint USB account in the February 2009 application though he disclosed a partial old statement, and he did not disclose the joint account in the April, 2009 application.

Eileen Williams was incorrect in saying that Mr. Nelson did not disclose bank accounts. Spreadsheets of Account Detail for the US Bank Silver Elite Checking Account and supporting documents were provided into evidence in this case. [Ex. 119, IDHW00169-200, 366-375] [Ex 119, WN000110-112]

Due to the difficulties of the Recession and the hardship on Idaho Families, Monday April 19, 2010, the Idaho Food Stamp Program Suspended the Asset Test to help Idaho Families, effective date was June 1, 2010. [ Ex 122, WN000109]

**\*10 E. Findings affirmed by the District Court were in violation of constitutional and statutory provisions. [Idaho Code § 67-5279](#).**

The Department violated constitutional and statutory provisions. It failed to acknowledge Mr. Nelson's report of childhood onset seizure disorder (epilepsy), a condition coming under the Americans With Disabilities Act and the Social Security Act. According to Section 11 of the Food & Nutrition Act of 2008 ([7 U.S.C. 2020](#)) § 4117 (c)(2) *Civil Rights Compliance*. The administration of the program by a State agency shall be consistent with the rights of households under the following laws (including implementing regulations): (A) The Age Discrimination Act of 1975 ([42 U.S.C. 6101 et seq.](#)); (B) Section 504 of the Rehabilitation Act of 1973 ([29 U.S.C. 794](#)); (C) The Americans with Disabilities Act of 1990 ([42 U.S.C. 12101 et seq.](#)), and (D) Title VI of the Civil Rights Act of 1964 ([42 U.S.C. 2000d et seq.](#)). The State of Idaho has not implemented regulations related to Civil Rights Compliance demanded of the States.

There were several matters of Civil Rights Compliance that were ignored by the Department and the District Court, including repeated negative references to Mr. Nelson's **elderly** mother (now 79 years of age), in violation of **elder abuse** laws and Older Americans Act.

The Department's Statement of the Proceeding beginning on Page 1 of the Response, goes on at length to point out the food stamp benefits purportedly issued to Wayde Nelson and his family, all the while failing to acknowledge the massive errors made by the Department by not issuing Mr. Nelson an EBT card for 103 days (over 3 months) from the time of applying for assistance, when an EBT card would have allowed him access to purchase food. It was a constitutional violation and violation of statutory provisions to fail to issue Mr. Nelson a means **\*11** of accessing funds that were deposited into a debit account by JPMorgan Chase by agreement with the United States Department of Agriculture, in order to make it possible for a needy household to purchase food for its family. The Department continues to cite Victoria Nelson continuing to help her son and granddaughter, but overlooks the fact that the Department failed to provide the assistance requested by Wayde Nelson on his Application for Assistance (AFA) filed with Idaho Department of Health and Welfare on any of the applications filed with the Department. Victoria Nelson had no intention of putting her son and granddaughter out on the streets in a state of starvation in the middle of Winter as would have happened had she not continued to help them. Victoria Nelson repeated, reported to the Department that she could not continue helping her son and granddaughter, yet the Department continued to fail to provide assistance to the household.

It would not matter how much money was deposited into an account by JPMorgan Chase at the request of the United States Department of Agriculture or the State of Idaho Department of Health and Welfare, if the funds were inaccessible to the applicant who applied for Assistance. The applicant would be unable to purchase food for his family. Without food for 103 days, the applicant and his family would be in a state of *starvation* if someone didn't reach out to help this family, whose head of household had a disability of childhood onset seizure disorder, which was timely reported to the Department long before the Department began an investigation into Mr. Nelsons bank accounts. Wayde Nelson was an expedite eligible applicant who should have received food assistance within one week, yet he was unable to access assistance for 103 days.

**\*12** In the final paragraph on Page 14, a violation occurs when the Department and its legal representative with the Idaho Attorney General's Office, Mary Jo Beig, reports an untrue statement that originates with the Department's Fraud Investigator Eileen Williams, who alleges alleges conversations with Victoria Nelson in which the dates vary. Victoria Nelson never had a conversation with Eileen Williams, and no meeting occurred on November 12, 2009, since it was canceled by Eileen Williams due to an emergency health problem with her grandchild.

The first of three untrue statements made by Eileen Williams in collusion with the Department's legal representative, Mary Jo Beig, alleges a meeting that occurred on or about November 12, 2009 (no such meeting occurred). It appears on page 10, No.



24, line 6 through 8 in Edward Lockwood's Findings of Fact, Conclusions of Law and Preliminary Decision dated August 31, 2010. It says: "Eileen stated that Victoria told her that Wayde and Heather needed help, and that assistance would be denied by the Department if Wayde told the whole truth to Department employees."

A second untrue statement occurs in a Reply to the Court filed by the Idaho Attorney General, Mary Jo Beig, and states as follows: Eileen Williams met with Wayde Nelson and Victoria on October 26, 2009 concerning the Intentional Program Violation ("IPV"). (AR 1, p. 149, Ll. 1-6.) During a telephone call with Victoria on October 27, 2009, Victoria disclosed to Ms. Williams that she and Mr. Nelson decided not to tell the whole truth because Mr. Nelson would not get Food Stamps if they did. (AR 1, p. 150, L. 18 through p. 151, L. 10.)

The last appears in the final paragraph on page 14 Lines 23 and 24, and page 15, Lines 1 and 2 of the Response Brief, and is cited the same as the second.

**\*13 F. Findings affirmed by the District Court were in error and in excess of statutory authority. [Idaho Code § 67-5279](#).**

The findings of the Administrator for the Division of Welfare, affirmed by the District Court, were in error and in excess of statutory authority of the agency, in ruling against the Appellant related to the U.S. Bank, Senior Silver Elite Bank Account, pursuant to the provisions of Idaho Code §5-6-103(a). Multiple Party Accounts-Ownership during lifetime. (a) A joint account belongs, during the lifetime of all parties, to the parties in proportion to the net contributions by each to the sums on deposit, unless there is clear and convincing evidence of a different intent. All funds deposited into the U.S. Bank Senior Silver Elite Bank Account were deposited for the account owner, Victoria Nelson. The money deposited came from government funds which were intended exclusively for Victoria Nelson. The Administrator for the Division of Welfare did not have the authority, nor did the District Court, to make a decision that Victoria Nelson's Social Security Income, Workers Compensation Benefits, Wells Fargo Reverse Mortgage Home Loan funds - an FHA loan, or Victoria Nelson's United Heritage home repair insurance funds authorized to Victoria Nelson, were to be counted as income for Wayde Nelson.

**G. Findings affirmed by the District Court were made upon unlawful procedure. [Idaho Code § 67-5279](#).**

By reversing the decision of the Hearing Officer related to the US Bank Senior Silver Elite Bank Account that was intended solely for Victoria Nelson, who had her son Wayde Nelson on the account as a signor so he could help pay his mother's bills while she was away from home, the Administrator for the Division of Welfare surpassed his authority, rendering an unlawful decision. The account was not Wayde Nelson's. He was not a senior and could not \*14 take out this account. The primary account holder had to be a senior. Victoria Nelson had her son on the account in order to help her purchase goods for her home, and to pay bills.

**H. Findings affirmed by the District Court were not supported by substantial evidence on the record as a whole. [Idaho Code § 67-5279](#).**

The Department makes the assumption that because money was being deposited into an account for food assistance, that Mr. Nelson had access to the money in this account, and it wasn't being used by others who were also allowed access to Mr. Nelson's account.

Though Mr. Nelson first applied for food assistance on December 8, 2008, he did not receive food assistance. He was unaware that money was being deposited into his food stamp account by JPMorgan Chase, since he had no means of accessing these funds in order to purchase food for his family and the Department failed to interview Mr. Nelson in order to find if he was able to successfully access the food stamp funds. After being unable to access funds to purchase food for his family, Mr Nelson applied a second time January 30, 2009. He went into greater detail, this time reporting his condition of childhood onset seizure

disorder, a condition he had since he was a child. Regardless of reporting disability of seizure disorder (epilepsy) and providing the Department with bank records to substantiate his need for food assistance, for approximately 103 days the Department failed to provide Mr. Nelson with an EBT card so he could access funds to purchase food. He was first provided the EBT Card on March 15, 2009, though he initially applied for assistance on December 8, 2008. This finally made it possible for Mr. Nelson to access funds to purchase food for his family. The first purchases were made on March 20, 2009.

**\*15** On Page 11, lines 20-23 of the Department's Response, the Department states: "Mr. Nelson accessed his Food Stamp benefits starting approximately March 15, 2009. It was March 20, 2009, that Mr. Nelson first used his EBT card to purchase food for his household. The Department's statement substantiates that food stamp funds alleged by the Department were not available to Mr. Nelson until March 15, 2009, 103 days after he applied for assistance, or when he finally received an EBT card numbered XXXXXXXXXXXXXXXX. [A.R. Ex 121 WN000093]"

After receiving the EBT card and doing extensive search, Mr. Nelson discovered the Department had wrongfully issued two cards to other applicants who were able to withdraw \$348.89 from his account. The Department withheld this information from him, and the amount was never reimbursed to Mr. Nelson.

Page 12, Lines 1-6 of the Department's Response, addresses the temporary link of one **card** to Mr. Nelson's food stamp account [A/R/ Ex 121 WN000093-96]. The Department is in error. There were two cards linked to Mr. Nelson's funds: No:5076920009088557 and No. 50769200090088532. Two unknown individuals whom the Department refused to disclose the names of, were accessing funds from Mr. Nelson's EBT account.

A sum of \$348.89 was removed from his account prior to him having an opportunity to use the account. Because of their withdrawal of \$348.89, Mr. Nelson was restricted in the amount that was available for him to purchase food in March 2009.

The Department claims on Page 12, Line 5 of its Response, that Ms. Williams reduced Mr. Nelson's March overpayment by "**that amount**", without indicating what the amount was. This disclosure was never mentioned by the Department in paperwork or court hearings.

**\*16 I. Findings affirmed by the District Court were arbitrary, capricious, and an **abuse** of discretion. Idaho Code §67-5279.**

The Department's decisions were arbitrary, capricious, and an **abuse** of discretion. At no time during this case has the Department considered that it neglected to address Mr. Nelson's disability, or that the Department intake workers were using the wrong income criteria in making determinations regarding the amount of income Mr. Nelson's household could earn and still receive food stamps. When applying for Medicaid on the same application for assistance (AFA) as is used for food stamps, there is a different criteria used in the provision of Medicaid. A person does not need to be receiving SSA or SSI in order to get food assistance, or to be considered disabled under the criteria established under the Food Stamp Act of 2008, which Idaho Department of Health and Welfare must abide by. Mr. Nelson was considered disabled under the guidelines of the Department and was receiving Medicaid Assistance for the Disabled. This decision was made before Hearing Officer Edward Lockwood on January 8, 2010.

As of October 2009, prior to the Department mailing Mr. Nelson a Notice of Intentional Program Violation on October 22, 2009, Wayde Nelson became exempt from participation in the Job Search Assistance Program due to permanent disability reported in a letter from Jackie Dearmon, Rehabilitation Counselor with California Department of Rehabilitation, [Ex 100, WN000088]. Mr Nelson was participating in job search with Idaho Department of Vocational Rehabilitation. All of this information was available to the Department, but it was ignored.

As of June 1, 2010, the Asset level was removed by Idaho Department of Health and Welfare in order to aid Idahoans during the Recession.



**\*17** Though Wayde Nelson was not provided an EBT card for 103 days, the month for which the Intentional Program Violation penalty was eventually issued, February 2009, Wayde Nelson had no access to food assistance since he hadn't been provided with an EBT card to access funds so he could purchase food for his household.

The amount of \$323.00 confirms that pursuant to [7 C.F.R. 253.8\(e\)](#), the Department failed to provide the household member, Wayde Nelson, with a notice of disqualification within 10 days of substantiating that he allegedly committed an IPV by the time it sent Mr. Nelson four separate Notices of Program Violation on October 22, 2009, November 24, 2009, January 21, 2010, and March 11, 2010. Each Notice and Demand claimed that Wayde Nelson owed the Department an unsubstantiated amount of \$1,380.00. Yet, when the Order was entered, the Department assessed an overpayment of \$323.00. This amount was assessed for a month in which Mr. Nelson had no EBT card or means of accessing funds in order to purchase food for his family. In February 2009, Mr. Nelson had no way of knowing there was an account in his name that could be used to access funds to purchase food. He wasn't provided an EBT card to access these funds and the Department refused to provide him with account statements.

The Department expected Mr. Nelson to appear in the Westgate Office in Boise for hearings on the middle of winter when he was living in Kuna, Idaho, a distance of over 50 miles round-trip, when he had no money to purchase gas for his vehicle. Mail was sent late by the Department and not received timely so Mr. Nelson could arrange for transportation [Ex. 102, WN000082], [Ex. 102, WN000083], and [Ex. 102, WN000084-85].

**\*18** The Department failed to adequately interview Mr. Nelson regarding his disability. It failed to investigate Department records regarding Mr. Nelson's reported disability, which should have occurred once Applications for Assistance (AFA) were filed with the Department.

The AFA was not only filed to receive food assistance, but to receive medical assistance. The Department was in possession of records indicating that in January 2010, Wayde Nelson was granted Medicaid Assistance for the Disabled at a hearing before Edward C. Lockwood, the Hearing Officer who heard the Food Stamp Matter on May 12, 2010 and August 19, 2010.

#### **J. Notices of Program Violations and Demand Letters for Payment of Overissuance/ Overpayments and Repayment Agreements**

Prior to the Department mailing Mr. Nelson the first Notice of Program Violation on October 22, 2009, (1) Mr. Nelson was exempt from participation in the Job Search Assistance Program following the Department receiving a disability report from Rehabilitation Counselor, Jackie Dearmon, with California Department of Rehabilitation, indicating that Wayde Nelson had permanent disability and would require assistance the rest of his life. [A.R. Ex 100, WN000088], and, (2) Mr. Nelson was receiving Medicaid Assistance for the Disabled as of January 8, 2010, following a Hearing held before Hearing Officer Edward Lockwood.

On Page two, Paragraph 2 of the Department's Response, the Department skirts the truth about the events of Notices of Program Violations and Demand Letters for Payment of Overissuance/ Overpayments and Repayment Agreements, as well as attached documents, indicating there were only two sent to Wayde Nelson by the Department on October 22, 2009 [AR 11, p.79.] and January 21, 2010 [AR13, p. 227.]

**\*19** This is incorrect. There were four Notices of Program Violations and Demand Letters for Payment of Overissuance/ Overpayments and Repayment Agreements, as well as attached documents, which were sent to Mr. Nelson on October 22, 2009, November 24, 2009, January 21, 2010, and March 11, 2010, all of which alleged that an amount of \$1,380.00 was owed to the Department, all are cited into evidence in the Appellant's Brief, beginning page 18.

In all four instances, the demand letters were inadequate because they did not inform the recipient of the state's discretionary settlement authority to settle, adjust, compromise, or deny recovery of all or a part of the overpayments. In withholding this

information from Mr. Nelson, the Department caused fear since the applicant had no employment or savings available to pay the exorbitant amount alleged by the Department. [*BLIEK v. PALMER*, 102 F. 3d 1472 (8th Cir. 1997)]

Code of Federal Regulations 7-CFR 243.16 (e)(2)(iv), indicates that the Department must either close the case or conduct a disqualification hearing within 90 days of notifying the household of an intentional violation. There was no closing of any of the four Notices of Disqualification, nor did a hearing take place until May 12, 2010 and August 19, 2010, as indicated in the last paragraph of the Department's Response on Page 2, Lines 18-19.

There were errors throughout the notices regarding which notice was first, and in the reporting of which bank account was or wasn't reported, and variance in the type of violation that Wayde Nelson allegedly committed - Inadvertent Household Error (IHE), or Intentional Program Violation, (IPV). Though all four Notices indicated Wayde Nelson owed the Department \$1,380.00, the final decision was that Mr. Nelson owed the Department \$323.00.

**\*20** All Notices and Demands submitted into evidence in Mr. Nelson's appeal were as follows:

#### **1. October 22, 2009 Notice of Program Violation, (IPV) [Ex 118, WN000001-8]**

On October 22, 2009, a First Notice of Program Violation and Demand Letter asking for Payment of Overissuance/Overpayments and Repayment Agreement and attached documents was sent to Wayde Nelson by the Department alleging an Intentional Program Violation (IPV) and demanding \$1,380.00. The reason for the alleged overpayments was: "You failed to report all bank accounts with US Bank on application 12/3/08, 2/6/09, and 4/29/09." There was no application on 12/3/08. The first Application for Assistance was dated 12/8/08.

The Department did not act on the October 22, 2009 Demand Letter for Payment of Overissuances/Overpayments and Repayment Agreement, and the time for prosecuting a program violation had passed as subsequent Notices were mailed and served on Mr. Nelson through March 11, 2010. The Department must either close the case or conduct a disqualification hearing within 90 days of notifying the household of an intentional program violation. This wasn't done. [Code of Federal Regulations, 7-CFR 243.16 (e)(2)(iv)]

Conflicting with the Department's Statements in its Response on Page 2, Line 11 et al, there was no meeting on November 24, 2009 in which the Fraud Investigator offered Mr. Nelson an Inadvertent Household Error if he would sign agreeing to pay \$1,380. However, there was a meeting at the Hawley-Troxell Law office with Joseph Mc Collum in which Fraud Investigator Eileen Williams halted the meeting and left in a "huff", when Wayde Nelson showed her the Department's file stamped copy of the bank account statement he provided to the Department - one she claimed hadn't been provided or received.

**\*21** Despite the erroneous allegations made in Notices and Demands made by Eileen Williams, Fraud Investigator with Idaho Department of Health and Welfare, Wayde Nelson provided two groups of attachments to the Department confirming his resources at the time of submitted his Applications for Assistance: (1) US Bank statement for the Silver Elite account #455 for October 2-6, 2008, attached to both his hand-delivered December 8, 2008 AFA [A.R. Ex. 2-a], and his mailed January 30, 2009 AFA (bearing the Department's intake/receipt stamp of "Feb 06,2009" and referred to by the parties as the February application) [A.R. Ex. 7-a], and (2) Documents prepared and signed by Victoria Nelson, Wayde Nelson's now 79 year old mother. In December 2008, these consisted of December 3 letter [A.R. Ex. 2-b], Contribution Statement [A.R. Ex 2-c], and Loan Forbearance Statement [A.R. Ex. 2-d]. In February 2009 Victoria prepared/signed documents were a loan verification letter [A.R. Ex. 7-b], a January 30, 2009 "Repayment Agreement" [A.R. Ex. 7-c], and a resubmitted/resigned "Contribution Agreement" [A.R. Ex 7-d]. Loans are excluded as income. [*IDAPA 16.03.04.405.10*].

#### **1. November 24, 2009 Notice of Program Violation, (IHE) [A.R. Ex 16 (a)(b)]**

On November 24, 2009, a second Notice of Program Violation and Demand Letter for Payment of Overissuance/Overpayments and Repayment Agreement as well as attached documents, was mailed to Wayde Nelson by the Department. It alleged an Inadvertent Household Error (IHE) in the receipt of food stamps, based on an allegation that Mr. Nelson failed to report bank accounts. The Notice demanded \$ 1,380.00. Again erring in dates, the reason for the alleged overpayments was: "You failed to report bank accounts correctly at 12/09, 2/09, and 4/09 applications". The accurate application dates were 12/08, 2/06, and 4/29. [A.R. \*22 Ex 16(a)(b).] While this is included as evidence in the Department's files, it is not admitted to by the Department in its Response to Appellant Brief. The Department refers to November 24, 2009 as a meeting and offer of Inadvertent Household Error.

### **3. January 21, 2010 Notice of Program Violation, (IPV) [Ex 118, WN000001-8]**

On January 21, 2010, a third Notice of Program Violation and Demand Letter for Payment of Overissuances/Overpayments and Repayment Agreement, accusing Wayde Nelson of an Intentional Program Violation, was sent to Mr. Nelson by the Department. Though this was the third Demand Notice, paperwork indicated it was the first notice. This document was almost the same as the first sent to Mr. Nelson on October 22, 2009. Though Mr. Nelson was represented by attorney Joseph McCollum, Jr, the Demand was not sent to Mr. McCollum. Mr. Nelson provided the Notice and Demand to his attorney, Joseph McCollum, Jr.

The Demand Letter and additional documents were unsigned, and indicated this was Mr. Nelson's first notice, when it was actually his third. The Department provided alleged reasons for overpayment, which were: you failed to report bank accounts with US Bank correctly at applications 12/8/08, 1/30/09, and 4/29/09. [A.R. Ex. 118 WN000117-121]

### **1. March 11, 2010, Notice of Program Violation, (IPV) [A.R. Ex 16 (a)(b)]**

On March 11, 2010, a fourth Notice of Program Violation and Demand Letter for Payment of Overissuances/Overpayments and Repayment Agreement was sent to Wayde Nelson by the Department. For the third time the Department Audits and Investigations Unit indicated that Wayde Nelson committed an Intentional Program Violation (IPV). The Demand Letter and additional documents were unsigned and paperwork at No. 6 on the Demand Letter indicated this \*23 was Wayde Nelson's first notice. At No. 4, the reasons cited for the overpayment were the same as those that were found on the January 21, 2010 Demand Letter for Payment of Overissuances/ Overpayments and Repayment Agreement: "You failed to report bank accounts with US Bank correctly at applications 12/8/08, 1/30/09, and 4/29/09, et al.

Deliberate omissions in the Department's Response to Appellant's Brief, support the fact that the Department's findings, inferences, conclusions, and decisions, which were affirmed by the District Court were in violation of Idaho Code [I.C. §67-5279\(3\)](#).

As seen on page 2, paragraph 2, of the Department's Response to Appellant's Brief, the Department continues refusing to admit to sending Wayde Nelson four separate Demand Letters for Payment of Overissuances/Overpayments and Repayment Agreements, indicating the Department was accusing Mr. Nelson of either Intentional Program Violations or Inadvertent Household Errors, asking Mr. Nelson for exorbitant funds when it was not until 103 days after applying for food assistance that Mr. Nelson was finally provided with an EBT card, which would make it possible for him to access food for his family. This matter was not one of simply "customer satisfaction" as Hearing Officer Edward Lockwood concluded, it concluded, it should not have been taken lightly by the Hearing Officer or the Department. Wayde Nelson did not make a false or misleading statement, or misrepresent, conceal, or withhold facts in order to obtain food assistance. Wayde Nelson did not commit an Intentional Program Violation.

### **\*24 III. CONCLUSION**

Following review of extensive bank account records, department records, and hearing records, related to Wayde Nelson and his mother, Victoria Nelson, the Department's Reply does not support the findings or the District Court's final order that Wayde Nelson, by clear and convincing evidence, committed an Intentional Program Violation in his application for food stamp benefits for his household and that he owed the Department \$323.00. Mr. Nelson did not make a false or misleading statement, or misrepresent, conceal, or withhold facts in order to obtain food benefits, which the household was not entitled to receive. He did not commit any act that violated a Federal statute or regulation related to the acquisition or use of the Food Distribution Program.

The Department claims that on November 24, 2009, it was willing to offer Wayde Nelson an Inadvertent Household Error instead of an Intentional Program Violation if he would sign agreeing to pay back \$1,380. A November 24, 2009 Notice of Disqualification and Demand letter for Payment of Overissuance/Overpayments and Repayment Agreement as well as attached documents served on Wayde Nelson indicated he committed an *Inadvertent Household Error*.

When a final order was entered, the Department ordered that he pay back \$323.00, and go without food assistance for 12 months. The same would have occurred had the decision been that he committed an Inadvertent Household Error (IHE). The \$323.00 has already been paid back, and Mr. Nelson went without food assistance for an entire year as a result of this order, even after experiencing 103 days without a means to access funds in order to purchase food for his household due to Department error. Wayde Nelson is unemployed and was and is disabled.

#### **\*25 PRAYER FOR RELIEF**

For the reasons set forth above and in his opening brief, Wayde Nelson respectfully asks this Court to: (1) Reverse the District Court Memorandum, Decision, and Order, which indicated that Mr. Nelson committed an Intentional Program Violation (IPV); (2) Change the violation to an Inadvertent Household Error (IHE); (3) Expunge all records indicating he committed an Intentional Program Violation; and, (4) Reverse the District Court's Memorandum, Decision, and Order affirming the June 21, 2013 Decision of Russell Baron, Administrator for the Division of Welfare, to overturn the August 19, 2010 Findings of Fact, Conclusions of Law, and Preliminary Decision of Hearing Officer, Edward Lockwood, which indicated the U.S. Bank Senior Silver Elite Bank Account taken out by Victoria Nelson, was Victoria's account, pursuant to [Idaho Code §15-6-103\(a\)](#). (Wayde Nelson did not have an income and none of the money going into the U.S. Bank Senior Silver Elite account was his).

Mr. Nelson is not asking for monetary damages, or repayment of the \$348.89 that was used by unknown others as a result of the Department erroneously providing two cards to unidentified individuals who accessed Mr. Nelson's EBT account.